

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

SPORTSCASTR, INC., (CAUSE NO. 2:23-CV-472-JRG
)
Plaintiff, ()
vs. ()
SPORTRADER, INC., et al., (MARSHALL, TEXAS
) SEPTEMBER 30, 2024
Defendants.) 10:30 A.M.

TELEPHONIC MOTION HEARING

BEFORE THE HONORABLE RODNEY GILSTRAP
UNITED STATES CHIEF DISTRICT JUDGE

SHAWN McROBERTS, RMR, CRR
100 E. HOUSTON STREET
MARSHALL, TEXAS 75670
(903) 923-8546
shawn_mcroberts@txed.uscourts.gov

A P P E A R A N C E S

FOR THE PLAINTIFFS: KING & SPALDING, LLP
500 W. 2ND STREET, SUITE 1800
AUSTIN, TEXAS 78701
(512) 457-2000
BY: MR. MATTHEW WOOD

CHERRY JOHNSON SIEGMUND
JAMES, PLLC
400 AUSTIN AVE., 9TH FLOOR
WACO, TEXAS 76701
(254) 732-2242
BY: MR. WILL ELLERMAN

FOR THE DEFENDANTS: BRYAN CAVE LEIGHTON
PAISNER, LLP - ST. LOUIS
ONE METROPOLITAN SQUARE
211 NORTH BROADWAY, SUITE 3600
ST LOUIS, MISSOURI 63102-2750
(314) 259-2000
BY: MR. DAVID ROODMAN
MR. NICK WILLIAMSON

SCHEEF & STONE, LLP - MARSHALL
P.O. Box 1556
MARSHALL, TEXAS 75671-1556
(903) 938-8900
BY: MR. MICHAEL SMITH

OFFICIAL REPORTER: SHAWN M. McROBERTS, RMR, CRR
100 E. HOUSTON STREET
MARSHALL, TEXAS 75670
(903) 923-8546

1 THE COURT: Good morning, counsel. This is Judge
10:46 2 Gilstrap. This is a telephonic hearing in the SportsCastr
3 d/b/a Panda Interactive versus Sportrader Group, et al.,
4 matter. This is Case No. 2:23-CV-472.

5 Let me ask for announcements on the record beginning with
6 the Plaintiff. One at a time, please. Please tell me who's
7 on the call on behalf of the Plaintiff Panda.

10:47 8 MR. ELLERMAN: Yes. Good morning, Your Honor. This
9 is Will Ellerman with Cherry Johnson Siegmund James. Also on
10 the call is Matthew Wood from King and Spalding. And Mr. Wood
11 will be arguing.

12 THE COURT: All right. Who's on the call on behalf
13 of Defendant Sportrader?

14 MR. SMITH: Your Honor, Michael Smith. And with me
15 on the call is Mr. Dave Roodman and Mr. Nick Williamson. And
10:48 16 Mr. Roodman will be presenting for us, and we're ready to
17 proceed.

18 THE COURT: All right. Well, I think I understand
19 the background of the issues, so why don't we just jump in.

20 Mr. Wood, let me hear from you, please.

21 MR. WOOD: Appreciate you accommodating us for the
22 hearing given the unique circumstances of this motion. It's a
23 little unusual. We thought the Court might benefit from being
24 able to hear from the parties.

10:49 25 As we set forth in our motion, we think the issue is

1 relatively straightforward. We attempted to serve our
2 amended -- or our initial infringement contentions on
3 Sportrader on March 11th in accordance with the docket control
4 order. We believed that service had been successful. We
5 loaded the infringement contentions into a box account at an
6 FTT site, and intended to give Sportrader's counsel access to
7 that site.

10:49 8 As I believe you're aware, Your Honor, there is a
9 co-pending case against Genius Sports that was filed at the
10 same time, and our administrative personnel who were in charge
11 of -- who were assisting us in affecting the service got the
12 counsel representing the two parties mixed up by mistake.
13 When Genius emailed the following day saying they had received
10:50 14 the service email on accident, they emailed our administrative
15 personnel who confirmed that it was an error and, as you can
16 see in the email that is attached to Sportrader's opposition
17 at page 4, Ms. Newman, our administrative personnel who was
18 performing the service, stated her belief on March 12th, the
19 day after the service, telling Genius that she believed,
10:50 20 quote, "your team was not given access to the materials in the
21 box account." She believed that, simply, one of the service
22 emails had been sent by mistake to Genius, but that the actual
23 contentions had been successfully served on Sportrader.

24 As you can see, in our motion, and it's a little small,
25 our motion at page 3 and then I think it's Exhibit 2 to our

1 motion, it's a little small but I can represent to you that
10:50 2 Vicki Meredith, the paralegal representing Genius at Kirkland,
3 and there Mr. Lomeo at Kirkland were two of the individuals
4 who were given access to the box account and Sportrader,
5 unfortunately, wasn't.

6 But even after Genius emailed us, we were not aware of
7 the extent of the error. We never received any similar email
8 from Sportrader. There were footnotes placed in unrelated
10:51 9 large filings that went unnoticed. We were focused on the
10 substance of those filings, and it wasn't until we had a meet
11 and confer in July that the issue actually was raised to our
12 attention.

13 We sent an email on July 8th complaining about
14 Sportrader's technical document production. In that email we
15 cited to pages in our infringement contentions that we believe
16 were calling out functionality that we weren't seeing
10:51 17 documents for. On the meet and confer we had after that,
18 Sportrader said, We don't understand what these citations are.

19 If you look at this in a follow-up email explaining they
20 were our contentions. On July 19th, which was a Friday,
21 Sportrader said for the first time in an email, We never
22 received separate infringement contentions. That Monday, July
23 22nd, we sent an email back confirming that we had -- we
10:52 24 believed we had served them, we investigated that day,
25 realized a mistake, and fixed it that same day.

1 So we understand, obviously, the administrative error
2 was our own and we're not disputing that, but it was an honest
3 mistake. It was an error that did go unnoticed until we --
4 until Sportrader raised it in an email, and we immediately
5 fixed it as soon as it was written in an email. We think that
6 the -- despite the mistake, though, there is still plenty of
10:52 7 time left in discovery. Fact discovery doesn't end until
8 March 17th. There's still several months from the time that
9 they received the infringement contentions in July. We don't
10 believe there is any prejudice here, that there's any need for
11 an extension, and we request the Court grant our motion to
12 serve the contentions out of time.

13 THE COURT: All right. Mr. Roodman, let me hear
10:53 14 your version of things, please.

15 MR. ROODMAN: Thank you, Your Honor. Good morning.

16 One thing I'd like to just address up front, Your Honor,
17 is in Plaintiff's papers they repeatedly alleged that
18 Defendants and Defendants' counsel have intentionally tried to
19 create this prejudice that this is a charade and that we've
10:53 20 known about the error, mistake that Mr. Wood just identified
21 since March.

22 And I want to put on the record -- we obviously put in
23 our papers, that that's just false. But I'd like to put on
24 the record as an officer of the court, I'd be willing to swear
25 on a Bible, we were never aware of the mistake until July

1 22nd. What occurred here is Plaintiff Panda served in
2 connection with their amended complaint, which Your Honor's
10:54 3 aware there was a complaint filed I believe -- original
4 complaint last October or so, and then this amended complaint
5 was filed in March. And attached to that complaint were
6 approximately 600 pages of what were titled both "Plaintiff's
7 Preliminary Infringement Contentions" and Infringement
8 Contentions," which, when we reviewed it -- and this was
9 served, by the way, one business day before March 11th, and so
10 it was served on a Friday before the Monday.

10:55 11 And it wasn't titled "Infringement Contentions" under
12 3-1, but given the fact that there were 600 pages and they
13 were titled "Preliminary Infringement Contentions and
14 Contentions," that we believed that's what Panda intended to
15 serve on us. And we indicated that in papers that we filed,
16 which I'll address in a moment.

17 But we discussed -- and I'm happy to share, probably more
10:55 18 than I should, but we discussed internally whether or not --
19 including with Michael Smith, whether, Hey, should we need to
20 strike this because in those contentions they didn't title it
21 as 3-1 and they didn't specifically identify -- the priority
22 claims didn't allege use of the alleged inventions. But that
23 information was in the body of the amended complaint, and we
24 decided, Hey, we're not going to put form over substance, and
10:55 25 we didn't move to strike it, the contentions were there, and

1 we were unaware of any alleged mistake.

2 There were also other allegations that were made in the
3 papers that somehow we may have conspired with Genius and sat
4 on this, and that's just blatantly false, Your Honor. We
5 reached out to Genius after we were advised around July 22nd
6 by Panda's counsel that they had made a mistake and said
10:56 7 -Genius -- and we reached out to Genius' counsel and said,
8 Hey, is this true, and they looked and found the email and
9 they shared it with us. Of note is that fact was never shared
10 with us by Panda; we got that information from Genius.

11 So anyway, that addresses the issue, hopefully, that
12 there's been no conspiring, there's been no intentional
13 misconduct, or any misconduct at all on the part of the
14 Defendants.

15 The issue here, we believe, Your Honor, comes down to
10:56 16 diligence, which is the standard that Plaintiff Panda needs to
17 establish, we believe, to be able to amend its infringement
18 contentions. There are, you know, approximately four
19 different points which we believe establish that there was no
20 diligence here and that Plaintiff has not met its burden.

21 First, it's characterized as a clerical mistake, and we
22 believe that, you know, maybe that's true, maybe a legal
23 assistant didn't serve it properly. But the certificate of
10:57 24 service on the document itself, which was signed by counsel,
25 indicated that the document that was allegedly sent to us went

1 to Genius' counsel, so counsel was involved. That's the first
2 step of they served the wrong party, but they should have
3 caught it with due diligence.

4 The second is one day later Genius reached out and said,
5 Hey, should we have received this, and Panda's counsel had
6 notice, and didn't just go to the legal assistant. As we
7 indicated in our papers, it appears the top were talking in
10:57 8 those emails. And maybe they didn't (unintelligible), but
9 they should have. That's the second step in due diligence.

10 Third is we served our invalidity contentions, and we
11 didn't vary any statements with respect to the fact that we
12 were relying upon the contentions that were served with the
13 amended complaint. On page 2 of our cover memo--and yes, it's
10:58 14 in a footnote, but it's about a quarter of a page--we explain
15 the fact that we were relying on the infringement contentions
16 that they served because we didn't we receive a separate
17 document that was titled 3-1.

18 We didn't lay behind the log, we didn't hide anything; we
19 said this is what we're relying on because that's all we
20 received. We didn't -- and we believed at that time that that
21 was Panda's intent. We didn't move to strike it and relied on
22 it. It was conspicuous.

23 Moreover, the fourth point, they should have caught it.
10:58 24 At any diligence they should have understood that. And I
25 understand Mr. Wood comment, Well we didn't read the cover

1 memo in its entirety in connection with the invalidity
2 contentions, but fourth, the contentions that we filed were
3 addressed to the seven claims that were asserted. It wasn't
4 124 claims; it was the seven specific claims they asserted in
5 the products that they asserted. There is no reason why
6 Plaintiff and Plaintiff's counsel could not and should not
10:59 7 have diligently determined that we were relying upon the
8 contentions that they served on Defendants that were titled
9 "Preliminary Infringement Contentions and Contentions."

10 Going over, Your Honor, we've looked at your cases, of
11 course, in the past, the four factors that are of import here
12 that the Court typically considers is, one, an explanation for
13 failure to meet the deadline. And as I've just laid out, we
14 don't believe there's a good explanation for failing to meet
15 that deadline.

10:59 16 The second is the factor's importance; what's the
17 importance of having to add -- and Plaintiff's not asking to
18 add one claim or two claims; they're asking to add 117 claims
19 to the seven original claims. And to put it in context, we
20 prepared and served over 10,000 pages of invalidity
21 contentions for seven calculate. And I can't calculate--maybe
22 I should pull out a calculator--but the enormity of what would
11:00 23 be required if 117 claims are added, but the key here is and
24 what I didn't hear from Mr. Woods is what's the importance of
25 the additional 117 claims? It's not anywhere in their papers

1 other than, Hey, it would be unfair.

2 Plaintiff has failed to show any importance with respect
3 to adding the enormous number of claims they are now wishing
4 to add, other than the prejudice it's going to cause us, which
5 is the next factor that the Court looks at--the potential
6 prejudice if leave is not granted.

11:00 7 And we spent an exorbitant amount of time, money, and
8 resources preparing the invalidity contentions that have
9 already been served and prepared on the seven claims; again,
10 over 10,000 pages and charts. And to add 117 claims at this
11 late date, six months later we believe is going be an
12 exponential undertaking. And, Your Honor, we believe that's
13 prejudice. Had we known that earlier, there's undoubtedly
11:01 14 going to be some duplication. There's been no identification
15 of what the importance of these additional 117 claims are, and
16 we don't believe that the prejudice -- the prejudice far
17 outweighs the -- any benefit that we haven't even seen with
18 respect to adding this.

19 THE COURT: All right.

20 MR. ROODMAN: So, Your Honor, we believe the motion
21 should be denied.

22 THE COURT: Mr. Wood, address the importance of
11:02 23 these 117 additional claims, and also speak to Defendant's
24 assertion of prejudice. I mean, if each of the 117 are unique
25 and stand alone, then that certainly is a different situation

1 than if there are 117 claims that fit within, more or less,
2 for example, six discreet categories or buckets, and dealing
3 with those six is a whole lot different than dealing with 117
4 standalone unique contentions.

5 So tell me, number one, what the importance of these are;
6 and then, number two, address the possibility that they are,
7 in fact, unique and standalone, and so I need to consider them
8 as 117 separate areas of inquiry and work, or they're
9 categorized properly in a much smaller group and the assertion
10 that this would be 117 start to finish exercises is really not
11 the case.

12 Can you address those two things for me?

13 MR. WOOD: Certainly, Your Honor.

14 And they tie together fairly well. You know, first to
15 the point about buckets, I don't think it would even be six
16 buckets, Your Honor. I think all of the -- as is the case of
17 most patents, these patents are all in the same family, the
18 claims all relate to the same invention. And the dependent
19 claims, for example, that are being added, you know, the
20 independent claims, you know, might say you need to have this
21 type of component, and then you have a dependent claim that
22 says the component needs to be one of A, B, C, or D.

23 The independent claim might say, you know, there needs to
24 be a secure internet connection, and the dependent claim says
25 the internet connection need to be this type of protocol.

1 There're those types of claims. None of the claims are
2 claiming an entirely new, distinct invention that is not
11:03 3 overlapping with the exemplary claims that we included in our
4 Rule 11 charts that were attached to the complaint.

5 And I'll note as a short aside, counsel mentioned that we
6 served our amended complaint the day before the infringement
7 contentions were due. The charts that were attached to that
8 amended complaint were the same charts that we attached to our
9 original complaint, that was filed, you know, almost a year
11:04 10 ago at this point. So I don't -- I'm not sure how you could
11 look at those and think that those are up-to-date charts, but
12 that's a bit of an aside.

13 THE COURT: Talk to me about the importance --

14 MR. WOOD: Sure. The importance, despite the
15 overlap in the claims, I think the primary importance I see is
16 two primary factors, which we do discuss in our papers.

17 The first is we have system claims and method claims, and
11:04 18 you have, as is often the case in a patent, an independent
19 claim that is claiming a particular method and then a separate
20 independent claim that is claiming a system that performs or
21 is configured to perform that method.

22 And so the technical substantive evaluative investigation
23 you have to do to determine whether there's infringement or
24 invalidity of those claims is going to be essentially the
25 same. There's almost nothing additional you would need to do

11:05 1 for the system other than, you know, check and make sure
2 there's a server and a processor, whatever the physical
3 components of the system are, that that additional
4 investigation is essentially de minimis.

5 But there are considerable infringement issues, you know,
6 § 271 issues that come up when you're looking at infringement
7 of a system of a system versus infringement of a method.
8 There's divided infringement issues, there's extra
9 territoriality issues, there's inducement --

10 THE COURT: Mr. Wood?

11 MR. WOOD: --contributory infringement issues.

12 Yes, sir.

11:05 13 THE COURT: Mr. Wood, slow down, please. I want to
14 make sure the court reporter follows you, and it's always
15 challenging with a speakerphone.

16 MR. WOOD: Understood. Understood. I apologize,
17 Your Honor.

18 THE COURT: Go ahead.

19 MR. WOOD: But that's the primary importance that we
20 see is having the system claims and the method claims both in
21 the case is important for us. We don't know what Sportrader's
11:06 22 non-infringement positions are going to be with respect to
23 use, how the system is employed, the indirect infringement
24 arguments, and their -- those legal issues are different
25 between the system and the method claims. So it would cut

1 out a pretty significant leg of our potential infringement
2 case to leave the remaining independent claims out of the
3 case.

4 And then, of course, with dependent claims you have
5 limitations that are being added that are relatively minor.

11:06 6 As I said, you know, a lot of times this component needs to
7 perform this particular way; that they're not adding anything
8 new or drastically different in terms of the type of technical
9 investigation that would be required to determine whether or
10 not infringement is met.

11 But again, you know, claim construction hasn't happened
12 yet. We don't know the metes and bounds of Sportrader's
13 non-infringement or invalidity positions, and it could very
14 well be the case that a dependent claim with a particular
11:07 15 limitation is the difference between validity or invalidity in
16 terms of the asserted claims.

17 So we don't believe from a technical standpoint in terms
18 of the kind of investigation that's going to be required to
19 understand the scope of the claims and how we're claiming that
20 they map on to the accused products, that that is a terribly
21 large undertaking. All of the claims are substantially
22 related to each other, and so we don't believe there's a
11:08 23 considerable technical investigation that's going to need to
24 occur to address these claims, but if -- it could very well be
25 the case that there are significant legal issues,

1 non-infringement, validity issues that could be arise as the
2 case proceeds to trial where these claims can end up becoming
3 very important.

4 THE COURT: All right. Thank you for that.

5 Do you have anything in response, Mr. Roodman?

6 MR. WOOD: Can I --

7 THE COURT: Yes. Go ahead, Mr. Wood.

11:08 8 MR. WOOD: I was going to point out as well, as
9 Mr. Roodman explained, you know, there are four factors the
10 Court looks at. We obviously understand that diligence is
11 important. We understand that we made an error here, but I
12 don't think there can be any real dispute that this was an
13 honest mistake. This was not an intentional gambit or
14 gamesmanship to try to delay sending Sportrader their
15 infringement contentions. I don't think there's any evidence
16 of that.

11:09 17 And in that case, we believe that the *Apple versus*
18 *Samsung* case that we cited in our briefs from the Northern
19 District of California is on point here, that the Court there
20 notes that courts have allowed amendments when the movant made
21 an honest mistake, the request to amend did not appear to be
22 motivated by gamesmanship, or where there is still ample time
23 left in discovery. And we think all three of those points
24 have been met. This was an honest mistake, there was not
11:09 25 gamesmanship or some sort of gambit on our part, and we

1 believe there is a ample time left in discovery to evaluate
2 the new claims and add them to the case without the need for
3 any extension. We've still got six months or so left in
4 discovery between the time we served the infringement
5 contentions and the close of fact discovery.

6 THE COURT: All right. Anything else, Mr. Wood?

7 MR. WOOD: I think that's it from me, Your Honor.

8 THE COURT: Mr. Roodman, do you have any brief
9 follow-up?

11:09 10 MR. ROODMAN: Thank you, Your Honor. And I'll make
11 it brief, Your Honor. And let me take these in the order I
12 wrote them down.

13 Mr. Wood's statement that's the charts are all the same,
14 respectfully, is inaccurate. The charts that were filed with
15 the amended complaint included new charts for the newly
16 asserted I believe the '008 Patent. Entirely new charts were
17 -- they were all titled "Preliminary Infringement
18 Contentions." So they were not identical; they were
19 different.

11:10 20 With respect to the *Apple versus Samsung* case, you know,
21 the court actually said --

22 THE COURT: Let me save you some time. I am
23 familiar with the case, I know what the Guidelines are here,
24 and there's no need to go into that in detail. I'm well aware
25 of that.

1 MR. ROODMAN: Okay. And so to the last point,
2 Judge, other than Mr. Wood pointing out that there are system
11:10 3 versus method claims, I didn't hear any specificity with
4 respect to what the importance here is. I heard generalities,
5 but -- and then he said he doesn't think there's even six
6 buckets, but there's no identification of what buckets that
7 are coming, differences, how many claims are going to be
8 involved with respect to the complexity of what's going to be
9 involved.

10 Mr. Wood said that they're relatively minor dependent
11:11 11 claims. To add 117 claims to the seven claims that Defendants
12 have relied upon based upon what Plaintiff Panda did is going
13 to require an exorbitant amount of work, and it's going to
14 create a significant amount of prejudice, and I don't believe
15 we've heard with any specificity what the importance here is,
16 other than there's a lot of claims and they're system and
17 method claims and they may be important but we don't know.
18 And we don't believe that there's enough, Your Honor,
11:12 19 certainly with respect to that factor, but all factors
20 combined that Your Honor's aware of with respect to diligence,
21 the failure to meet the deadline, importance, and prejudice,
22 we believe it's insufficient and the Plaintiff's motion should
23 be denied.

24 THE COURT: All right. Thank you.

25 All right, counsel. With regard to this matter, first of

11:12 1 all, I don't put any credence in the back-and-forth
2 allegations of impropriety or gamesmanship or lying behind the
3 log either direction. I think it's unfortunate that that's
4 crept into the exchange between the parties here, but I don't
5 give it any credence.

6 With regard to Mr. Wood saying that the Plaintiff made an
7 honest mistake, I don't know how honest it was; I don't think
8 it was intentional, I don't think it was contrived. It
11:12 9 clearly was a mistake. And there were at least a couple of
10 opportunities between March and July to catch the mistake.
11 When the counsel for Genius called and said, Were we supposed
12 to get this, that is an opportunity to catch it that was
13 missed. In August when Defendants served their invalidity
14 contentions, I understand they weren't served in isolation and
11:13 15 there were thousands of pages of additional material, but this
16 footnote is not buried; it is clearly on page 2 and, the best
17 of my eyesight, it's the same font as the text of the
18 commission is. So -- and it says on its face that they have
19 -- the infringement contentions haven't been properly served.

20 So there not only was a mistake; there was a couple of
21 opportunities to catch the mistake that were missed, too.
11:13 22 Again, I don't think they were intentional misses, but they
23 were misses nonetheless. So the diligence factor here is not
24 strong.

25 I do think -- notwithstanding Mr. Roodman's arguments,

1 I do think that there is importance here from the Plaintiff's
2 standpoint. And I don't know that the granularity he asked
11:14 3 for is necessary at this point, but I'm persuaded that these
4 are not frivolous amended contentions.

5 And with regard to the prejudice factor, if these had
6 been properly served in a timely fashion and the same 117
7 amended contentions had been properly served along with the
8 original seven contentions, Defendant would have to deal with
9 them.

11:14 10 Now, whether down the road there was a showing of
11 exceptional litigation, that's for another day, but at that
12 point Defendant would have had to deal with them. So to say
13 now from the Defendant's standpoint the cost and the expense
14 and the delay of dealing with those is something that we
15 shouldn't have to consider because we never would have had to
16 do it is just not the case. Defendant would have had to do it
17 if the Plaintiff had done their job right.

18 So -- and I don't -- I'm not persuaded that these are 117
11:15 19 unique, standalone inquiries that are going to require
20 separate and unique analysis on each one. I don't know that
21 they're properly categorized in as few as six categories or
22 buckets. I think -- Mr. Wood said he thinks they are. I
23 don't know that anybody's looked at that with great detail.
24 But I'm persuaded there is almost unavoidably a material
25 amount of overlap here.

11:16 1 So, long story short -- and nobody's talked about a
2 continuance and I don't think a continuance is a relevant
3 factor at this early stage. Given the stage of the case,
4 given that we're talking about from March until July as the
5 squandered, for lack of a better term, amount of time, I'm
6 going to permit the amended contentions and the proper service
7 of the original contentions. We're going to fix this and
11:16 8 we're going to fix it now. And Plaintiff needs to serve
9 everything correctly immediately.

10 I am going to award the Defendant the cost of opposing
11 this motion, and I'm going to direct that the Plaintiff
12 reimburse Defense counsel for the reasonable cost of this
13 motion and the time it's taken to resolve this before the
14 Court. Defendant's not supposed to get greedy and gouge here;
11:16 15 this is reasonable and attributable to this dispute. But
16 Plaintiff's going to reimburse Defendant for that because
17 Defendant shouldn't have had to do this; Plaintiff should have
18 done it right to begin with.

19 Also, I'm going to direct that the parties meet and
20 confer on the issue of scheduling. I am not going to
21 unilaterally enter an amended docket control order that pushes
11:17 22 these deadlines that are yet to be reached out, but if the
23 Defendant thinks that the March to July time frame, be that
24 four months or whatever it is, that's been squandered--and I
25 think squandered is a good word here--if Defendant thinks that

1 it would be appropriate to expand the deadlines in the current
2 docket control order to recapture that amount of time,
3 especially in light of what Defendant's fears are about these
11:17 4 amended contentions, the Court's inclined to amend the docket
5 control order even if I have to move the trial date a
6 reasonable amount. And I think that mitigates, to a large
7 extent, of any prejudice Defendant otherwise feels that they
8 are going to suffer.

9 So to recap, the opposed motion for leave to properly
10 serve the initial infringement contentions and the amended
11:18 11 contentions by Plaintiff is going to be granted, but I'm going
12 to order Plaintiff to reimburse Defendant the cost of this
13 dispute related to the opposed motion that Plaintiff filed and
14 the hearing that's been had today.

15 And I'm going to expect both sides to meet and confer
16 reasonably about whether it is or isn't necessary to expand
17 the deadlines in the current docket control order. And, quite
18 honestly, Plaintiff, if the Defendant feels strongly that it
11:18 19 is, I'm probably going to give Defendant some latitude here
20 whether you oppose it or not. But I think both sides need to
21 communicate professionally and reasonably about that issue.

22 Perhaps four months is too much, perhaps a month or two
23 months would be adequate, but if Defendant feels it needs some
24 additional time to grapple with what's being served on it at
25 this delayed time, I'm going to be inclined to give them that

11:19 1 latitude. But I want both sides to talk about it and
2 hopefully come back to me with either, We'll make the time
3 lines that we have work, or an agreed-upon motion to modify
4 the docket control order. I'm not going to do it
5 unilaterally, but I want to hear from you-all after you've met
6 and conferred on that issue. And given the stage of where we
7 are in the case--and yes, it is relatively early--I think this
11:19 8 is a fair result.

9 Plaintiff, I trust that just the lawyers on this side are
10 not the only ones that know about this, and the support staff
11 and the people that see all these exchanges back and forth who
12 also missed not only doing it right the first time but the
13 early signs that it needed to be corrected, I hope that there
14 are some corrective measures.

15 I mean, when the Kirkland and Ellis people call you and
11:20 16 say, Were we supposed to get that, it's hard for me to see how
17 that was overlooked unless it's just arrogance or you've got
18 staff that's stretched so thin that they don't do what they're
19 supposed to do. But there clearly are some internal
20 corrective measures that King and Spalding need to look at.

21 And I'm not going to require anything here; I just -- I'm
22 going to make it clear that I think that's something you need
23 to go back to your firm and make sure this doesn't happen
11:20 24 again. I haven't seen this kind of sloppiness from your firm.
25 I hope I don't see it again. If I do see it again, it

1 | probably won't be treated in the same manner as this
2 | situation's being treated by the Court.

3 So with all that, counsel, bottom line is I'm going to
4 grant the opposed motion to amend from the Plaintiff, I'm
5 going to direct the Defendant to be reimbursed for its costs
6 in this matter, and I will wait to hear from you-all whether
7 there's an agreed-upon or disputed need to consider modifying
8 the docket control order in this case. That will be the
9 Court's order.

10 Thank you for your attendance. That concludes today's
11 telephonic hearing.

12 (End of hearing.)

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1 I HEREBY CERTIFY THAT THE FOREGOING IS A
2 CORRECT TRANSCRIPT FROM THE RECORD OF
3 PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.
4 I FURTHER CERTIFY THAT THE TRANSCRIPT FEES
5 FORMAT COMPLY WITH THOSE PRESCRIBED BY THE
6 COURT AND THE JUDICIAL CONFERENCE OF THE
7 UNITED STATES.

8
9 S/Shawn McRoberts 10/04/2024

10 _____ DATE _____
11 SHAWN McROBERTS, RMR, CRR
12 FEDERAL OFFICIAL COURT REPORTER
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Shawn M. McRoberts, RMR, CRR
Federal Official Court Reporter